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KAWASAKI KISEN KAISHA, LTD. and
"K" LINE AMERICA, INC.

ORIGINAL
FILED
DEC - 5 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE CONTINENTAL INSURANCE
COMPANY, a corporation,

Plaintiff,

vs.

KAWASAKI KISEN KAISHA, LTD.
D/B/A "K" LINE, a foreign
corporation; "K" LINE AMERICA,
INC., a foreign corporation; and DOE
ONE through DOE TEN,

Defendants.

CASE NO.:

007-06148 JCS

NOTICE OF REMOVAL UNDER 28
U.S.C. § 1441 (FEDERAL
QUESTION)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1441(b) (removability of federal question), and 28 U.S.C. § 1446 (removal procedure), Defendants KAWASAKI KISEN KAISHA, LTD. and "K" LINE AMERICA, INC. (hereinafter collectively referred to as the "Defendants") remove the state case identified below to this Court.

1. On October 26, 2007, a Complaint was filed in the Superior

1 Court of the State of California in and for the County of Alameda, entitled "The
2 Continental Insurance Company v. Kawasaki Kisen Kaisha, Ltd., et al", case
3 number RG07-353407. A true and correct copy of the Complaint is attached
4 hereto as Exhibit A and incorporated herein by this reference.


5 2. This removal is timely. A defendant has 30 days to remove the
6 case to federal court, commencing upon service of the Complaint. 28 U.S.C. §
7 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 143 L.
8 Ed. 2d 448, 119 S. Ct. 1322 (1999). Kawasaki Kisen Kaisha, Ltd., is organized
9 and existing under the laws of Japan with its principal place of business in Tokyo.
10 Kawasaki Kisen Kaisha, Ltd. received a copy of the summons and complaint by
11 mail on November 19, 2007, at its Tokyo office.

12 3. "K" LINE AMERICA, INC. was served with the summons and
13 complaint on November 19, 2007.

14 4. This Court has federal question jurisdiction over the claims against
15 KAWASAKI KISEN KAISHA, LTD. 28 U.S.C. § 1331 confers original
16 jurisdiction to this Court of "all civil actions arising under the laws ... of the
17 United States." The Complaint alleges that the Defendants received shipments of
18 plums at Oakland, California for carriage to Hong Kong under certain ocean bills
19 of lading. (See Complaint, Exhibit "A" at ¶ 5). The cargo claims arising from the
20 transportation of these goods are governed by the Carriage of Goods by Sea Act
21 ("COGSA"), 46 U.S.C. § 1300, et seq., and the terms and conditions of bills of
22 lading. Plaintiff's claims against KAWASAKI KISEN KAISHA, LTD.
23 consequently arise under the laws of the United States, which bring them within
24 the scope of this Court's federal question jurisdiction. This case is therefore
25 removable pursuant to 28 U.S.C. § 1441(b). See *B.F. McKernin & Co., Inc. v.*
26 *United States Lines, Inc.*, 416 F. Supp. 1068, 1071 (S.D.N.Y. 1976); *Jones v.*
27 *Compagnie Generale Maritime*, 882 F. Supp. 1079, 1083 (S.D. Ga. 1995); *Joe*
28 *Boxer, Inc. v. Fritz Transp. Int'l*, 33 F. Supp.2d 851, 854 (C.D. Cal. 1998).

1 5. The removing parties, KAWASAKI KISEN KAISHA, LTD. and
2 "K" LINE AMERICA, INC. are the only Defendants named in the Complaint.

3
4 Dated: November 30, 2007 COGSWELL NAKAZAWA & CHANG, LLP

5
6 By 
7 Alan Nakazawa
8 Dena S. Aghabeg
9 Attorneys for Defendants KAWASAKI
10 KISEN KAISHA, LTD. and "K" LINE
11 AMERICA, INC.

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Attorneys for Plaintiff
The Continental Insurance Company

FILED
ALAMEDA COUNTY
2007 OCT 26 AM 10:43
CLERK OF THE SUPERIOR COURT
BY DOROTHY L. LEE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

THE CONTINENTAL INSURANCE
COMPANY, a corporation,

Plaintiff,

v.

KAWASAKI KISEN KAISHA, LTD.
D/B/A "K" LINE, a foreign corporation;
"K" LINE AMERICA, INC., a foreign
corporation; and DOE ONE through DOE
TEN,

Defendants.

PG 7 - 353407
Case No.

COMPLAINT FOR BREACH OF
CONTRACT; BAILMENT BREACH OF
CAL. C.C. § 2194, ET SEQ.; and
NEGLIGENCE

BY FAX

Plaintiff for its Complaint prays as follows:

GENERAL ALLEGATIONS

1. Plaintiff THE CONTINENTAL INSURANCE COMPANY is now and at all times material was a corporation duly organized and existing by virtue of law.
2. Plaintiff is informed and believes and on the basis of that information and belief alleges that KAWASAKI KISEN KAISHA, LTD. D/B/A "K" LINE, a foreign corporation; "K" LINE AMERICA, INC., a foreign corporation, and DOE ONE through DOE TEN are now and at all times material were engaged in business as common carriers of goods for hire in the County of

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Complaint.doc

COMPLAINT

Exhibit A-4

1 Alameda, State of California.

2 3. The true names of defendants sued herein as DOE ONE through DOE TEN, each
3 of whom is responsible for the events and matters herein referred to, and each of whom caused or
4 contributed to the damage herein complained of, are unknown to plaintiff who therefore sues said
5 defendants by such fictitious names. Plaintiff will amend its complaint to show the true names of
6 said defendants when the same have been ascertained.

7 **FIRST CAUSE OF ACTION**

8 **(Breach of Contract against KAWASAKI KISEN KAISHA, LTD. D/B/A "K" LINE, "K"
9 LINE AMERICA, INC., and DOE ONE through DOE TEN)**

10 4. Plaintiff realleges and incorporates with like force and effect as though set forth
11 fully herein each and every allegation of paragraphs 1, 2, and 3 set forth above.

12 5. Plaintiff is informed and believes, and on that basis alleges, that on or about
13 September 8, 2006, at Oakland, California, defendants KAWASAKI KISEN KAISHA, LTD.
14 D/B/A "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through DOE FIVE, and each of
15 them, received cargos of interspecific plums, all in good order and condition, as follows:

- 16 • 1,360 cartons for carriage under bill of lading number KKLUUS1542042;
- 17 • 1,360 cartons for carriage under bill of lading number KKLUUS1541953;
- 18 • 1,360 cartons for carriage under bill of lading number KKLUUS1541951;
- 19 • 1,360 cartons for carriage under bill of lading number KKLUUS1542123;

20 and others, issued by and/or on behalf of said defendants. Said defendants, and each of them,
21 agreed, under contracts of carriage and in return for good and valuable consideration, to carry said
22 cargo at a temperature of 34 degrees Fahrenheit from Oakland, California to Hong Kong, and
23 there deliver said cargo to the lawful holder of the aforementioned bills of lading, and others, in
24 the same good order, condition, and quantity as when received.

25 6. Thereafter, in breach of and in violation of said agreements, KAWASAKI KISEN
26 KAISHA, LTD. D/B/A "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through DOE
27 TEN, and each of them, did not deliver said cargo in the same good order, condition, and quantity
28 as when received at Oakland. To the contrary, said defendants, and each of them, delivered the

1 cargo damaged due to exposure to the improper temperature. The value of the damaged delivered
2 cargo was \$70,588.00.

3 7. Plaintiff issued a policy of cargo insurance to its insured, the owner of the above-
4 described cargo of interspecific plums, providing cover for damage to said cargo. This policy
5 was in full force and effect at all material times. After said cargo was delivered damaged by said
6 defendants and each of them, the insured made claim on said cargo insurance policy, and said
7 claim was paid by plaintiff. Plaintiff incurred \$901.00 in mitigation of the above loss, and seeks
8 recovery for same, as well. Plaintiff thereafter became, and remains, legally and equitably
9 subrogated to the rights of its insured. Plaintiff is the owner of the claims brought herein, and is
10 the real party in interest. Plaintiff has therefore been damaged in the sum of \$71,489.00, no part
11 of which has been paid, though duly demanded.

12 SECOND CAUSE OF ACTION

13 (Bailment against KAWASAKI KISEN KAISHA, LTD. D/B/A "K" LINE, "K" LINE
14 AMERICA, INC., and DOE ONE through DOE TEN)

15 8. Plaintiff realleges and incorporates with like force and effect as though set forth
16 fully herein each and every allegation of paragraphs 1 - 7 set forth above.

17 9. At all times pertinent, defendants KAWASAKI KISEN KAISHA, LTD. D/B/A
18 "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through DOE TEN, and each of them,
19 were bailors of property in the County of Alameda, California.

20 10. On or about September 8, 2006, at Oakland, California, defendants KAWASAKI
21 KISEN KAISHA, LTD. D/B/A "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through
22 DOE TEN, and each of them, received personal property, specifically cargos of interspecific
23 plums, all in good order and condition, represented as follows:

- 24 • 1,360 cartons for carriage under bill of lading number KKLUS1542042;
- 25 • 1,360 cartons for carriage under bill of lading number KKLUS1541953;
- 26 • 1,360 cartons for carriage under bill of lading number KKLUS1541951;
- 27 • 1,360 cartons for carriage under bill of lading number KKLUS1542123;

28 and others. Said defendants thereafter had possession and the right of control over said property

1 and agreed to carry same to Hong Kong and return said property to the property owner's designee
2 at a future time and in the same condition as when said defendants received it.

3 11. To the contrary, said defendants, and each of them, delivered the cargo damaged
4 due to their negligence, specifically, by exposing the cargo to the improper temperature. The
5 value of the damaged delivered cargo was \$70,588.00.

6 12. Plaintiff issued a policy of cargo insurance to its insured, the owner of the above-
7 described cargo of interspecific plums, providing cover for damage to said cargo. This policy
8 was in full force and effect at all material times. After said cargo was delivered damaged by said
9 defendants and each of them, the insured made claim on said cargo insurance policy, and said
10 claim was paid by plaintiff. Plaintiff incurred \$901.00 in mitigation of the above loss, and seeks
11 recovery for same, as well. Plaintiff thereafter became, and remains, legally and equitably
12 subrogated to the rights of its insured. Plaintiff is the owner of the claims brought herein, and is
13 the real party in interest. Plaintiff has therefore been damaged in the sum of \$71,489.00, no part
14 of which has been paid, though duly demanded.

15 THIRD CAUSE OF ACTION

16 (Breach of Ca. C.C. §2194 against KAWASAKI KISEN KAISHA, LTD. D/B/A "K" LINE,
17 "K" LINE AMERICA, INC., and DOE ONE through DOE TEN)

18 13. Plaintiff realleges and incorporates with like force and effect as though set forth
19 fully herein each and every allegation of paragraphs 1 – 12 set forth above.

20 14. At all times pertinent, defendants KAWASAKI KISEN KAISHA, LTD. D/B/A
21 "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through DOE TEN, and each of them,
22 are now and at all times material were engaged in business as common carriers of goods for hire
23 in the County of Alameda, State of California.

24 15. On or about September 8, 2006, at Oakland, California, defendants KAWASAKI
25 KISEN KAISHA, LTD. D/B/A "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through
26 DOE TEN, and each of them, received personal property, specifically cargos of interspecific
27 plums, all in good order and condition, represented as follows:

- 28 • 1,360 cartons for carriage under bill of lading number KKLUS1542042;

- 1 • 1,360 cartons for carriage under bill of lading number KKLJUS1541953;
- 2 • 1,360 cartons for carriage under bill of lading number KKLJUS1541951;
- 3 • 1,360 cartons for carriage under bill of lading number KKLJUS1542123;

4 and others. Said defendants thereafter had exclusive control over said property and agreed to
5 carry same to Hong Kong and return said property to the property owner's designee at a future
6 time and in the same condition as when said defendants received it.

7 16. Thereafter, in breach of and in violation of said agreements, KAWASAKI KISEN
8 KAISHA, LTD. D/B/A "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through DOE
9 TEN, and each of them, did not deliver said cargo in the same good order, condition, and quantity
10 as when received at Oakland. To the contrary, said defendants, and each of them, delivered the
11 cargo damaged due to exposure to the improper temperature. The value of the damaged delivered
12 cargo was \$70,588.00.

13 17. Plaintiff issued a policy of cargo insurance to its insured, the owner of the above-
14 described cargo of interspecific plums, providing cover for damage to said cargo. This policy
15 was in full force and effect at all material times. After said cargo was delivered damaged by said
16 defendants and each of them, the insured made claim on said cargo insurance policy, and said
17 claim was paid by plaintiff. Plaintiff incurred \$901.00 in mitigation of the above loss, and seeks
18 recovery for same, as well. Plaintiff thereafter became, and remains, legally and equitably
19 subrogated to the rights of its insured. Plaintiff is the owner of the claims brought herein, and is
20 the real party in interest. Plaintiff has therefore been damaged in the sum of \$71,489.00, no part
21 of which has been paid, though duly demanded.

22 FOURTH CAUSE OF ACTION

23 (Negligence against KAWASAKI KISEN KAISHA, LTD. D/B/A "K" LINE, "K" LINE
24 AMERICA, INC., and DOE ONE through DOE TEN)

25 18. Plaintiff realleges and incorporates with like force and effect as though set forth
26 fully herein each and every allegation of paragraphs 1 - 17 set forth above.

27 19. At all times pertinent, defendants KAWASAKI KISEN KAISHA, LTD. D/B/A
28 "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through DOE TEN, and each of them,

1 are now and at all times material were engaged in business as common carriers of goods for hire
2 in the County of Alameda, State of California.

3 20. On or about September 8, 2006, at Oakland, California, defendants KAWASAKI
4 KISEN KAISHA, LTD. D/B/A "K" LINE, "K" LINE AMERICA, INC., and DOE ONE through
5 DOE TEN, and each of them, received personal property, specifically cargos of interspeciefic
6 plums, all in good order and condition, represented as follows:

- 7 • 1,360 cartons for carriage under bill of lading number KKLUS1542042;
- 8 • 1,360 cartons for carriage under bill of lading number KKLUS1541953;
- 9 • 1,360 cartons for carriage under bill of lading number KKLUS1541951;
- 10 • 1,360 cartons for carriage under bill of lading number KKLUS1542123;

11 and others. Said defendants thereafter had possession and the right of control over said property
12 and agreed to carry same to Hong Kong and return said property to the property owner's designee
13 at a future time and in the same condition as when said defendants received it.

14 21. To the contrary, said defendants, and each of them, delivered the cargo damaged
15 due to their negligence, specifically, by exposing the cargo to the improper temperature. The
16 value of the damaged delivered cargo was \$70,588.00.

17 22. Plaintiff issued a policy of cargo insurance to its insured, the owner of the above-
18 described cargo of interspeciefic plums, providing cover for damage to said cargo. This policy
19 was in full force and effect at all material times. After said cargo was delivered damaged by said
20 defendants and each of them, the insured made claim on said cargo insurance policy, and said
21 claim was paid by plaintiff. Plaintiff incurred \$901.00 in mitigation of the above loss, and seeks
22 recovery for same, as well. Plaintiff thereafter became, and remains, legally and equitably
23 subrogated to the rights of its insured. Plaintiff is the owner of the claims brought herein, and is
24 the real party in interest. Plaintiff has therefore been damaged in the sum of \$71,489.00, no part
25 of which has been paid, though duly demanded.

26 WHEREFORE, plaintiff prays that this Court enter judgment in its favor and against the
27 defendants; that this Court decree payment by defendants to plaintiff in the amount of \$71,489.00,
28 together with prejudgment interest thereon and costs of suit herein; and that plaintiff have such

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 444 West Ocean Boulevard, Suite 1250, Long Beach, CA 90802-8131.

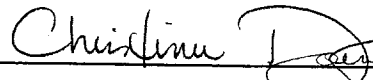
On December 5, 2007, I will serve the foregoing document described as: **NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441 (FEDERAL QUESTION)** on the interested parties in this action, by placing the () original (x) true copy thereof enclosed in sealed envelope to the addressee as follows:

Jonathan W. Thames
ARCHER NORRIS
2033 N. Main Street, #800
Walnut Creek, CA 94596

Tel: (925) 930-6600
Fax: (925) 930-6620
Attorney for Plaintiff The Continental
Insurance Company

- (X) **by mail** as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, which is deposited with U.S. Postal Service on that same day with postage thereon fully prepared at Long Beach, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- () **by personal service** as follows: I caused to be delivered by messenger service to the offices of the addressee(s).
- () **by facsimile** as follows: I caused service by facsimile. The transmission was reported as complete and without error with transmission report.
- () **by overnight mail** as follows: I caused the foregoing document to be served by overnight service.
- () **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (X) **(Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 4, 2007, at Long Beach, California.


Christina Doemeny